

FCC MAIL SECTION

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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

DA 96-740

DISPATCHED BY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 95-121
Table of Allotments,)	RM-8660
FM Broadcast Stations.)	
(Dearing, Kansas))	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: May 9, 1996

; Released: June 19, 1996

Comment Date: August 10, 1996

Reply Comment Date: August 25, 1996

By the Chief, Allocations Branch:

1. At the request of William Bruce Wachter ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 10 FCC Rcd 8085, (1995), proposing the allotment of Channel 251A to Dearing, Kansas, as the community's first local aural transmission service. Petitioner filed comments restating his intention to apply for channel if allotted. KGGF-KUSN, Inc. ("KGGF"), licensee of Stations KGGF(AM) and KUSN(FM), Coffeyville, Kansas filed comments. Petitioner and KGGF filed reply comments.¹

2. In response to the Notice, KGGF submitted comments stating that petitioner has failed to establish that Dearing is a community for allotment purposes. KGGF contends Dearing contains none of the social, economic or cultural components traditionally associated with community status. It argues that Dearing is located less than five miles from Coffeyville and is a bedroom suburb of that larger community. KGGF states that Dearing has no schools, industry, medical facilities, local newspaper, business or political organizations, nor any civil or cultural organizations. It states that police, fire and emergency personnel, road maintenance are provided by the Montgomery County, Kansas. Further, it submits that the only commercial establishments in Dearing are two restaurants, one antique store and one convenience store. It cites Columbia,

¹ After the record closed in this proceeding, petitioner filed a "Motion to Strike or, in the Alternative, to Consider Response" directed to KGGF's reply comments. Petitioner contended that the reply comments was an unauthorized pleading because it addressed petitioner's earlier reply comments. The KGGF reply comments were timely filed and addressed issues that are being considered in this proceeding. There is no basis not to consider these reply comments. Accordingly, the relief requested in this Motion is hereby denied.

California, 6 FCC Rcd 3292; Aguila, Arizona, 6 FCC Rcd 4278 (1991); Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991); Hannibal, Ohio, 6 FCC Rcd 2144 (1991); Hannahs Mill and Milledgeville, Georgia, 6 FCC Rcd 3753 (1991); Naples, North Naples and Immokalee, Florida, 41 RR 2d 1549 (1977); Coker, Alabama, 43 RR 2d 190 (1978); and East Hemet, Indio, Rancho California, Sun City, and Temecula, California, 4 FCC Rcd 7895 (1989), as cases that demonstrate where the Commission has refused to accord community status to locations that had a far more substantial population base than Dearing. KGGF also notes that Dearing has a population of 428 persons which it believes is an insufficient population base to support an FM station. In this connection, KGGF alleges that the allotment of an FM station to Dearing will only serve to exacerbate the economic plight of small market radio broadcasters such as KGGF who are constantly facing increased competition for fewer advertising dollars.

3. Petitioner disputes KGGF's claim that Dearing is too small and has insufficient local institutions. He states that Dearing has three churches, a local volunteer fire department, post office, three beauty shops, a car wash, an automobile retailing and repair business, and a heating and air conditioning business. More importantly, petitioner argues the community is incorporated. Petitioner notes that the Commission has specifically held that incorporated communities qualify as communities for allotment purposes, citing Willows and Dunnigan, California, 9 FCC Rcd 1802 (1994), where the Commission stated "...As a general rule, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status as a community for allotment purposes." Petitioner rebuts KGGF's claim that the Commission has refused to accord community status to locations that had a far more substantial population base than Dearing. Petitioner argues that KGGF has not cited any case where the Commission has denied community status to an active, incorporated place. Petitioner submits that Dearing is an incorporated community which is governed by a mayor and council.² Petitioner believes the existence of an active city government in Dearing is more than sufficient to qualify the community to receive an FM allotment.

4. In reply comments, KGGF notes that petitioner has offered no additional information about Dearing or why Dearing could "presumably" support its own broadcast station. KGGF reiterates its belief that Dearing should not be considered a community for allotment purposes and contention that the allotment of Channel 251A to Dearing would only exacerbate the economic plight of small market radio broadcasters. It further contends that petitioner filed responsive comments to cure his deficient pleading by including information about Dearing that could have been included in the original petition. KGGF states the Commission should not allow petitioner to supplement the record with this unauthorized information.

5. Based upon petitioner's showing, we find that Dearing is a community for allotment purposes. We disagree with KGGF's claims that Dearing's population is too small and that the community

² Petitioner submitted an affidavit from the City Clerk of Dearing, describing the city government of the community; identifying the current mayor and council; and showing that the city council meets on a monthly basis.

contains none of the social, economic or cultural components traditionally associated with a community. To support this argument, it cites various Commission decisions where the Commission has denied certain municipalities community status for allotment purposes. However, we find that none of these cases are on point. All the cases cited by KGGF involve communities that were neither listed in the U.S. Census nor incorporated.³ This case is distinguishable from those cited by KGGF since Dearing is incorporated and evidence has been provided indicating that it has its own local government.

6. We also reject KGGF's argument that petitioner's responsive comments contained unauthorized information. KGGF has cited no reason or legal precedent to cause us to reject petitioner's reply comments. In fact, by filing responsive comments, petitioner was merely complying with the Commission's directive pursuant to paragraph 2 of the Appendix to the Notice of Proposed Rule Making. That paragraph states "Proponent(s) will be expected to answer whatever questions are presented in initial comments..." According, we find that petitioner did not err by filing information regarding Dearing's community status since KGGF challenged that status in its initial comments.

7. Finally, in response to KGGF's contention "...that the addition of yet another broadcast station in the market will likely jeopardize the economic stability of the existing licensees in the Coffeyville market", raises issues which the Commission has already determined are not relevant in either a licensing or allotment context. See Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (188), recon. denied, 4 FCC Rcd 2276 (1989); Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993); and Albion, Nebraska, 10 FCC Rcd 3183 (1995). Consequently, there is no basis under the current state of Commission precedent for consideration of those issues.

8. In summary, we believe the public interest would be served by the allotment of Channel 251A to Dearing since it could provide the community with its first local aural transmission service. Channel 251A can be allotted to Dearing in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.⁴

³ With one exception, all the cases cited by KGGF involved communities that were not listed in the U.S. Census. The exception, East Hemet et. al., California, involved a community that was designated as a Census Designated Place "CDP". KGGF relies on East Hemet et. al., California, as a case where a community with "a population of approximately 16,000", was denied community by the Commission. We find that the decision in East Hemet, CA, supra, is not on point. In that case, community status was not awarded to "East Hemet" because evidence was provided to show that the community contained none of the social, economic or cultural components that the Commission generally associates with community status, including statements from area residents attesting to their belief that "East Hemet" was not a community separate from Hemet. Here, no party has filed comments offering such evidence. In fact, the only written testimony submitted was filed by petitioner confirming the existence of Dearing's city government.

⁴ The coordinates for Channel 251A at Dearing are North Latitude 37-03-31 and West Longitude 95-42-47.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 3, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Dearing, Kansas	251A

10. The window period for filing applications will open on August 3, 1996, and close on September 3, 1996.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau